No. 705

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES, PETITIONER

v.

EMMETT F. DICKERSON

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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CITATIONS

[1] Other statutes are cited in Appendix B, but are not referred to in the text of this brief, and are, therefore, not included in this index.

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OPINION BELOW

The opinion of the Court of Claims (R. 3–9) is not yet officially reported.

JURISDICTION

The judgment of the Court of Claims was entered November 6, 1939 (R. 9). The petition for a writ of certiorari was filed February 6, 1940 (R. 9), and granted March 25, 1940. The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether Section 402 of Public Resolution No. 122 of June 21, 1938, *infra*, p. 21, suspends the en-

listment allowance otherwise payable under Section 9 of the Act of June 10, 1922, *infra*, p. 20, to men reenlisting in the military forces of the United States during the fiscal year ending June 30, 1939.

STATUTES INVOLVED

The applicable portions of the statutes involved are set forth in Appendix A, *infra*, pp. 20–22.

STATEMENT

The respondent has served in the United States Army as a private or a noncommissioned officer with substantial continuity since August, 1917 (R. 3). He was honorably discharged upon the expiration of each of his enlistments, his last discharge being from an enlistment terminating on July 21, 1938 (R. 3). On July 22, 1938, he reenlisted for another three-year term, and is now serving in the Army (R. 3).

Section 9 of the Act of June 10, 1922, provided that after July 1, 1922, an enlistment allowance should be paid to every honorably discharged enlisted man who reenlists within a period of three months from the date of his discharge. The Act of March 3, 1933, "suspended" for the fiscal year ending June 30, 1934, so much of Sections 9 and 10 of the Act of June 10, 1922, as provided for the payment of enlistment allowances. This suspension was continued in identical language for the fiscal years 1935, 1936, and 1937. However, different statutory language was employed for the years

1938 and 1939. Thus, Section 402 of Public Resolution No. 122, approved June 21, 1938, provided in substance that no part of any appropriation contained in that or any other Act for the fiscal year ending June 30, 1939, should be available for the payment of enlistment allowances for reenlistments, notwithstanding the provisions of Sections 9 and 10 of the Act of June 10, 1922. Similar provisions had been made for the fiscal year 1938.

When respondent reenlisted on July 22, 1938, he was not paid an enlistment allowance, although he had reenlisted within three months from the date upon which he had been honorably discharged from his preceding term (R. 3). If respondent were entitled to an enlistment allowance for his reenlistment of July 22, 1938, there is due him the sum of $75.00 (R. 3).

Respondent brought suit in the Court of Claims to recover the sum of $75.00, alleged to be owing to him under the provisions of Section 9 of the Act of June 10, 1922. The United States opposed the claim on the ground that Section 402 of Public Resolution No. 122 of June 21, 1938, suspended the allowance for reenlistment during the fiscal year ending June 30, 1939. The Court of Claims entered judgment for the respondent.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that an enlisted man reenlisting in the Army during the fiscal year ending June 30,

1939, and complying with the terms of Section 9 of the Act of June 10, 1922, is entitled to recover an enlistment allowance.

2. In failing to hold that Section 402 of Public Resolution No. 122 of June 21, 1938, suspends the payment of any enlistment allowance which might be otherwise payable under Sections 9 and 10 of the Act of June 10, 1922, to a man reenlisting in the military or other uniformed forces of the United States during the fiscal year ending June 30, 1939.

3. In holding that the purpose and effect of Section 402 of Public Resolution No. 122 of June 21, 1938, and the Act of May 28, 1937, differed from the purpose and effect of Section 18 of the Act of March 3, 1933, and identical provisions in subsequent Acts which suspended payment of the enlistment allowance provided in Sections 9 and 10 of the Act of June 10, 1922.

4. In holding that the only purpose and effect of Section 402 of Public Resolution No. 122 was to prohibit the payment of enlistment allowances from the funds appropriated for the fiscal year ending June 30, 1939.

5. In entering judgment for the respondent.

SUMMARY OF ARGUMENT

The question whether a restriction on the expenditure of appropriated funds suspends an allowance authorized by prior legislation depends solely on the intention of Congress. The proviso of Section 402 of Pub. Res. No. 122 was intended to suspend

the right to an enlistment allowance for the fiscal year 1939 and not merely to prohibit the use of appropriated funds for such purpose. That such was the intention is clear from the face of the statute and the legislative history. The difference between the form of language employed in the fiscal years 1938 and 1939 and that used in the appropriation Acts in the four preceding years was due not to a difference in Congressional intention but was probably attributable to "considerations of parliamentary tactics and strategy."

ARGUMENT

Introductory.—Section 402 of Public Resolution No. 122, *infra*, p. 21, provided that "no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment" of any enlistment allowances for "reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable portions of sections 9 and 10" of the Act of June 10, 1922. The court below held that the limitation expressed in this proviso had for its sole purpose the placing of an inhibition upon the accounting officers of the Government against the payment of such allowances, and that it left unimpaired the right of men reenlisting in the uniformed services of the United States to receive such enlistment allowances. It concluded that the obligation of the United States to pay such allowances remained in full force and effect and that the

United States was legally liable therefor, notwithstanding the prohibition of the statute against payment.

We submit that the decision of the court below was incorrect. In cases of this character the law is well settled that the intent of Congress is controlling. The language of the Act itself, its legislative history, the ordinary rules of statutory construction, and the manner in which the Congress commonly employs provisos to appropriation Acts to achieve similar results clearly disclose that Congress intended to suspend the payment of enlistment allowances for the fiscal year 1939. The United States District Court for the Eastern District of New York so held in *Brooks* v. *United States* (decided November 2, 1939, not yet officially reported).

1. This Court has consistently held that the effect on prior legislation of a prohibition against the use of appropriated funds for a purpose theretofore authorized is to be determined by the intent of Congress; it may suspend, supersede, or modify the prior authorizing legislation if Congress so intends. *United States* v. *Mitchell*, 109 U. S. 146, 150; *Dunwoody* v. *United States*, 143 U. S. 578; *Belknap* v. *United States*, 150 U. S. 588, 593; *United States* v. *Valte*, 233 U. S. 509, 515; *United States* v. *Perry*, 50 Fed. 743, 748 (C. C. A. 8th); *cf. Wallace* v. *United States*, 133 U. S. 180; *United States ex rel. Gillett* v. *Dern*, 74 F. (2d) 485 (App. D. C.).

As this Court observed in *United States* v. *Mitchell* (109 U. S. 146, at 150): "The whole question depends on the intention of Congress as expressed in the statutes." See *Belknap* v. *United States*, 150 U. S. 588, 595.

2. A deliberate limitation in an appropriation Act on the use of appropriated funds evidences on its face an intention to modify or suspend *pro tanto* a prior authorization. This Court has consistently so held wherever such suspension or modification would serve a reasonable or rational end. *United States* v. *Mitchell*, 109 U. S. 146; *Mathews* v. *United States*, 123 U. S. 182; *Belknap* v. *United States*, 150 U. S. 588; *United States* v. *Vulte*, 233 U. S. 509; *cf. United States* v. *Langston*, 118 U. S. 389.

The purpose of the restriction in question, quite obviously, was to reduce the ordinary expenditures of the Government during a period of economic crisis. A provision expressly suspending the enlistment allowance was first adopted in the Treasury-Post Office Appropriation Act of 1934 (sec. 18 of the Act of March 3, 1933, c. 212, 47 Stat. 1489, 1519). The suspension was contemporaneous with other economy measures reducing salaries and other ordinary expenditures of the Government (see Act of June 30, 1932, Pt. II, c. 314, 47 Stat. 399), was but one of several economy provisions in the Treasury-Post Office Appropriation Act of 1934 (see sections 2–18 of the Act of March 3, 1933, 47 Stat. 1489,

1513–1519), and was continued in effect for the fiscal year 1935 as an amendment to the Economy Act of March 20, 1933, c. 3, 48 Stat. 8 (see Act of March 28, 1934, Title II, Economy Provisions, 48 Stat. 509, 523). The restriction on the use of all appropriated funds in the statute here in question merely continued the policy first established in 1933.

The purpose of Congress would obviously be defeated if judgments for enlistment allowances could be obtained in the Court of Claims to be paid from appropriations for the payment of such judgments. That Congress did not withhold payment out of funds appropriated by this statute merely to permit payment out of another appropriation Act is evident from the express provision that the restriction should extend to the use of funds appropriated by "this or any other Act." It may be true that a judgment in the Court of Claims for enlistment allowance might not be presented for payment until a subsequent year, but the purpose of Congress in forbidding the payment of enlistment allowances was to eliminate certain expenditures, not merely to postpone them. Any contention that Congress intended only to postpone payment for the period required to obtain a judgment in the Court of Claims is sufficiently answered by the fact that the prohibition has been continued in the appropriation Acts for six consecutive years. *United States* v. *Mitchell*, 109 U. S. 146, 149. Moreover, since the purpose of Congress was ad-

mittedly to achieve some economy, it could not have been the intention to remit claimants of enlistment allowances to a suit in the Court of Claims and thus not only to put the claimant to an unreasonable expense but to incur for the Government certain unavoidable costs of litigation.[1]

The court below, it should be observed, did not hold that the right to an enlistment allowance could not be suspended by a provision in an appropriation Act. The court acknowledged that the express "suspension" of the right in Section 18 of the Treasury-Post Office Appropriation Act of 1934, continued in identical language in various appropriation Acts through the fiscal year 1937, extinguished the right to an allowance for those years, and that recovery for that period could not be obtained in the Court of Claims. The court took the view, however, that the change in the language in the appropriation Acts for the fiscal years 1938 and 1939 and the omission in these statutes of language expressly "suspending" the allowance evidenced a Congressional intention

[1] We are advised by the Comptroller General that there are approximately 100,000 scheduled claims for estimated allowances for the fiscal years of 1938 and 1939, each of which could be made the subject matter of an independent suit. Even though the legal question involved were decided adversely to the Government in this proceeding, it would be necessary to reduce each claim to judgment in the Court of Claims since the allowance could not be paid save out of an appropriation to pay judgments against the United States.

merely to restrict the use of the appropriated funds without "suspending" the right and that suit to recover the allowance could therefore be maintained in the Court of Claims.

The court below, we suggest, failed to give effect to the language of the appropriation Acts for the fiscal years 1938 and 1939 providing that enlistment allowances should not be paid "notwithstanding the applicable provisions of sections 9 and 10" of the Act of June 10, 1922, authorizing the payment of enlistment allowances. The conclusive answer, however, as the legislative history demonstrates, is that the change in the form of language did not reflect a change of intention but at most a change of parliamentary procedure.

3. The provisions with respect to the year 1938 originated as an amendment, introduced by Senator Byrnes, to the second deficiency appropriation Act for the fiscal year 1937. The amendment, in language identical with the statutory provisions applicable here, prohibited the use of appropriated funds for the payment of enlistment allowances for the year 1938. Senator Byrnes stated (81 Cong. Rec. 4426):

> * * * the language of the amendment has been carried ordinarily in the Treasury and Post Office appropriation bill, but was not carried in that appropriation bill this year, and is therefore proposed to be included in the bill now before us.
>
> * * * * *

> The effect of it is simply to carry the same limitation that has been carried on for years in the appropriation bills.
>
> * * * * *
>
> Its purpose is to continue the appropriation situation that has existed for years, so that no bounty shall be paid for reenlistment in the military and other uniformed services.

This amendment was adopted by the Senate without recorded opposition (81 Cong. Rec. 4426). It was sent to conference, and in reporting the amendment to the House, the House managers described the amendment as "continuing during the fiscal year 1938 the suspension of the reenlistment gratuity for enlisted personnel of the Army, Navy, Marine Corps, and Coast Guard." 81 Cong. Rec. 5084. The House agreed to the amendment and the debate thereon demonstrates that all concerned, including the opponents of the measure, viewed the proposal as differing in no way from the provisions in prior bills which suspended the payment of the enlistment allowance. 81 Cong. Rec. 5083–5084, 5088–5091. The conclusion is inescapable that Congress believed that in enacting this amendment for the fiscal year 1938 it had effectively suspended the provisions of the Act relating to enlistment allowances, as it had done in prior years.

The legislative history also discloses that Congress, in adopting the identical provisions for the fiscal year 1939, likewise did not intend to change

the nature of its prohibition of enlistment allowances. 83 Cong. Rec. 9512, 9677–9679.

The provision was first introduced as an amendment to the second deficiency appropriation bill for the fiscal year 1938 (H. R. 10851, 75th Cong., 3d Sess.), then pending before the House. A point of order was made against the amendment on the ground that it was legislation in an appropriation bill. Representative Woodrum of Virginia, who had charge of the amendment, admitted that the point of order was good, and the Chair sustained it (83 Cong. Rec. 8567). The same amendment was then offered in the Senate, and the Presiding Officer also ruled that it would change existing law, and must be stricken (83 Cong. Rec. 9189). It would seem clear that were the amendment merely a limitation upon the power of accounting officers, as the court below held, and not legislation suspending prior legislation, a point of order against its inclusion in an appropriation bill could not have been sustained. See House Rule XXI, sec. 2; Senate Rule XVI. The provision was thereafter included by the conference committee as a proviso to Section 402 of H. J. Res. 679 (which later became Pub. Res. No. 122), appropriating funds for the Rural Electrification Administration, on which a point of order was not permitted by the rules. No objection was made in the Senate (83 Cong. Rec. 9512); in the House complaint was voiced that a point of order could not then be made (83 Cong. Rec. 9678–9679).

The 1939 proviso was regarded as having the same purpose and effect as the provisions carried in various appropriations for the five preceding years. Representative Woodrum, chairman of the subcommittee in charge of the measure, said in presenting the amendment to the House (p. 9677):

> No reenlistment allowances have been paid for the past 5 fiscal years in any of the services, and in the absence of permanent law stopping it, the inhibition has been shuttled about in economy bills and appropriation bills at one time or another. We have not paid them for 5 years, and the latter part of this amendment now before the House is a Senate amendment which discontinues for another year the payment of the reenlistment allowances.

The statements of the two chief opponents of further suspension of the allowance (Representatives Scott and Izac) indicate their understanding that the act covering the fiscal year 1939, like the acts of previous years, prevented a reenlisting man from receiving the bounty (pp. 9678–9679). It is clear that Congress deemed the payment of enlistment allowance as fully suspended for the fiscal years 1938 and 1939 as if the 1922 Act had been temporarily repealed.[2]

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[2] For conclusive corroboration of this view, see the discussion on the various amendments offered to another bill (H. R. 10851, 75th Cong., 3d Sess.) seeking to appropriate sums for the payment of the allowances, pp. 14–16 and especially note 4, *infra*.

4. The legislative history relied on by respondent in support of his position does not relate to the prohibition embodied in section 402 but to an entirely different measure, the second deficiency appropriation bill for 1938 (H. R. 10851, 75th Cong., 3d Sess.). And the statements quoted (Br. in Opp. 4) are wholly consistent with the Government's view.

H. R. 10851, as it came to the floor, contained the usual appropriation for support of the various service corps, but did not include any specific appropriation for the payment of enlistment allowances; nor did it include any prohibition upon their payment. Several attempts were made, on the floor of the House of Representatives, to amend the bill so as to make express provision for the payment of the bounty to the various services (83 Cong. Rec. 8553–8554, 8556–8557, 8565–8568), one of which was successful, and the others not. During the discussion on these amendments, Representatives Bacon and Wadsworth stated that specific provision, while desirable, was really unnecessary since the general lump sum appropriation to the Army, Navy, Marine Corps, and Coast Guard covered the allowances, and if payment was not made, the reenlisted men could sue in the Court of Claims. (See Br. in Opp. 4).* These state-

* For years after the Act of June 10, 1922, appropriation Acts listed no designated sum for payment of the enlistment allowance, but the lump sum appropriation for pay in the ordinary appropriation Acts was held to be available. See the opinion of the Court of Claims (R. 6).

ments were made in connection with a bill which contained no prohibition of payment analogous to section 402,[4] and which left the 1922 Act in full

[4] Immediately *after* his amendment to include the prohibition in H. R. 10851 was stricken on point of order in the Senate, Senator Byrnes also suggested, on the same theory as the two Representatives (and not, as respondent asserts (Br. in Opp. 4), in opposition to them) that reenlisted men denied this allowance might sue in the Court of Claims. It was his view that the prohibition might be necessary even if no specific provision was made for payment of the allowances.

The following colloquy then occurred, clearly revealing the purpose of the restrictive amendment (identical with section 402) (83 Cong. Rec. 9190):

"Mr. WALSH. What the Senator sought to do was to have Congress declare as its policy that it did not intend in the future to pay such reenlistment bounties, so as to prevent possible claims; is not that true?

"Mr. BYRNES. Mr. President, the sole position of the committee is that no funds being provided, we should not leave open the opportunity for numbers of persons to file claims in the Court of Claims in behalf of men who reenlist, with the result that a year from now, or 2 years from now, some men would receive the reenlistment bounty or some part of it, after the attorneys receive their fees.

"Mr. WALSH. I think I understand."

H. R. 10851, the Second Deficiency Appropriation Bill, and H. J. Res. 679 (later becoming Pub. Res. No. 122), which embodied Section 402, were being considered by the Congress contemporaneously—at the end of a session.

After the point of order to the proposed amendment to H. R. 10851 had been sustained, Senator Byrnes also said (83 Cong. Rec. 9189–9190):

"I will say to the Senator from Massachusetts, in the light of the ruling of the Chair, that before the Congress adjourns I shall certainly make an effort to do something to bring about a change, so that there will not be dissatis-

effect The specific enlistment allowance appropriation adopted by the House did not survive the passage of the Act (83 Cong. Rec. 9187, 9667–9669, 9671; cf. Sen. Rep. 2161, 75th Cong., 3d Sess.), and the suspension provision found place in another act."

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faction, among the various services. If the bounties were all restored, millions of dollars would be involved."

[5] Accepted legislative practice reinforces the conclusion that Congress sought to suspend the operation of the 1922 Act as to reenlistments during the fiscal year ending in 1939. Congress has frequently utilized language substantially similar to that here employed in various appropriation acts for the purpose of achieving objectives which might ordinarily be classified as strictly legislative in character, including the suspension of preexisting statutory rights and privileges. A number of recent statutes are set forth in Appendix B, *infra*, pp. 23–27, and the language of certain of such statutes is set forth in Appendix C, *infra*, pp. 28–30. Reasons of strategy, time, and legislative convenience often impel the adoption of this method, even though it may contravene the stricter niceties of parliamentary procedure. Cf. Luce, *Legislative Problems* (1935), pp. 421 *et seq.*, 432. In view of this common practice and of the decisions of this Court, it obviously cannot be successfully urged, as respondent seeks to do (Br. in Opp. 5–6), that section 402 clearly and unambiguously on its face "imposes a limitation upon the use of appropriations and nothing more." As Circuit Judge Sanborn, in 1892, said of an identical "appropriation" formula, in *United States* v. *Perry*, 50 Fed. 743, 748 (C. C. A. 8th):

"For many years it has been a common practice of the congress to enact general provisions of law in the acts making appropriations, until there is now little, if any, presumption that such provisions are not intended to be permanent and general."

5. In view of the unequivocal character of the Congressional intention to continue the prohibition on the payment of enlistment allowances unchanged for the fiscal years 1938 and 1939, the explanation, if any, for the difference between the form of language employed for those years and that used in the appropriation Acts for the previous four years is immaterial. It is probable, however, that the change was due to "considerations of parliamentary tactics and strategy * * *." Cf. *Helvering* v. *Hallock*, No. 110, this Term, decided January 29, 1940. It is pertinent to observe that the prohibition on the payment of enlistment allowances first appeared in Title II of the Treasury-Post Office Appropriation Act of 1934, along with numerous other economy provisions; was included the next year in Title II, Economy Provisions of the Independent Office Appropriation Act for the fiscal year 1935 as part of an amendment to the Economy Act of March 20, 1933; was inserted the two years following in the Treasury-Post Office Appropriation Acts for the fiscal years 1936 and 1937; was passed in its present form as an amendment to the Second Deficiency Appropriation Bill of 1937 and finally as a rider to Section 402 of H. J. Res. 679 (which became Pub. Res. No. 122), appropriating funds for the Rural Electrification Administration for the fiscal year 1939.

The particular statute in which the prohibition was included from year to year was obviously dictated by parliamentary exigencies and not by con-

siderations of form or logic. A like explanation probably accounts for the change in the form of words employed for the fiscal years 1938 and 1939. As set forth above, the opponents of the prohibition for the fiscal year 1939 objected to the provision as first introduced on the ground that it constituted legislation, the objection being sustained in both Houses of Congress. It is reasonable to assume that the sponsors of the prohibition, anticipating a like objection to the amendment for the fiscal year 1938, attempted to draft the prohibition in the language of an appropriation measure. But whatever the tactical purpose of the change in form, it is clear beyond doubt that no change in purpose or effect was intended.[6]

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[6] Respondent's authorities (Br. in Opp. 7–8) are not even mildly persuasive. *United States* v. *Langston*, 118 U. S. 389, involved solely the failure to appropriate, in one year, the full amount of the compensation of a diplomatic salary; there were no other indications of any legislative intention to modify the prior law, or any evidence of a public purpose which the Congress might have intended to accomplish by such a change. The *Langston* case, this Court has observed, "expresses the limit in that direction" (*Belknap* v. *United States*, 150 U. S. 588, 595) and applies only to cases of a "mere omission to appropriate a sufficient sum." See *United States* v. *Valte*, 233 U. S. 509, 515. The *Valte* case does not support respondent's position. It merely held that a prohibition on the use of appropriation funds for two successive years did not constitute a permanent prohibition of the expenditure of funds appropriated in subsequent years without such restriction.

Archbald v. *United States*, 218 Fed. 270 (M. D. Pa.), like the *Langston* case, concerned merely a failure to appropriate. *Ewarin* v. *United States*, 37 Fed. 470, 478 (S. D.

CONCLUSION

For the reasons above stated, we respectfully submit that the judgment below is erroneous and should be reversed.

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Ga.), and *United States* v. *Aldrich*, 58 Fed. 688, 689 (C. C. A. 1st), concern an appropriation Act which forbade use of the sum appropriated by that Act alone, and the court in each case expressly distinguished statutes which, like section 402, provide that "no part of any appropriation contained in this *or any other Act*" (italics supplied) is to be used for certain purposes. In *Bell* v. *United States*, 35 Fed. 889 (M. D. Ala.), the court merely rejected a contention that a general statute fixing the amount of fees was repealed permanently and rendered inapplicable in 1887 by a statute which limited the appropriation for 1886.

APPENDIX A

Act of June 10, 1922, c. 212, 42 Stat. 625, 629–630 (U. S. C., Title 10, sec. 633; Title 37, secs. 13, 16):

SEC. 9. * * * On and after July 1, 1922, an enlistment allowance equal to $50, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge, and an enlistment allowance of $25, multiplied by the number of years served in the enlistment period from which he has last been discharged, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge. * * *

SEC. 10.

* * * * * *

* * * Existing laws authorizing a reenlistment gratuity to enlisted men of the Navy and Coast Guard are hereby repealed, and an enlistment allowance equal to $50 multiplied by the number of years served in the enlistment period from which he has last been discharged, but not to exceed $200, shall be paid to every honorably discharged enlisted man of the first three grades who reenlists within a period of three months from the date of his discharge; and an enlistment allowance of $25 multiplied by

the number of years served in the enlistment period from which he has last been discharged, but not to exceed $100, shall be paid to every honorably discharged enlisted man of the other grades who reenlists within a period of three months from the date of his discharge. * * *

Public Resolution No. 122, June 21, 1938, c. 554, 52 Stat. 809, 818:

SEC. 402. For an additional amount for salaries and expenses of the Rural Electrification Administration, fiscal years 1938 and 1939, including the same objects and under the same conditions specified under this head in the Independent Offices Appropriation Act, 1939, including printing and binding, there is appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $700,000: *Provided*, That no part of any appropriation contained in this or any other Act for the fiscal year ending June 30, 1939, shall be available for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge as to reenlistments made during the fiscal year ending June 30, 1939, notwithstanding the applicable provisions of sections 9 and 10 of the Act entitled "An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922 (37 U. S. C. 13, 16).[1]

[1] The Act of May 28, 1937, c. 277, 50 Stat. 213, 232, contains language identical with that of the *proviso* to section 402, with the substitution of "fiscal year ending June 30, 1938" for "fiscal year ending June 30, 1939."

Act of March 3, 1933, c. 212, 47 Stat. 1489, 1519:

> SEC. 18. So much of sections 9 and 10 of the Act entitled "An Act to readjust the pay and allowances of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service," approved June 10, 1922 (U. S. C., title 37, secs. 13 and 16), as provides for the payment of enlistment allowance to enlisted men for reenlistment within a period of three months from date of discharge is hereby suspended as to reenlistments made during the fiscal year ending June 30, 1934.[2]

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[2] This section was continued in full force and effect for the fiscal years ending June 30, 1935, June 30, 1936, and June 30, 1937, by Section 24 of the Act of March 28, 1934, c. 102, 48 Stat. 509, 523, the Act of May 14, 1935, c. 110, 49 Stat. 218, 226–7, and the Act of June 23, 1936, c. 725, 49 Stat. 1827, 1837, respectively.

APPENDIX B

The following statutes are illustrative of instances where the Congress has undertaken to legislate through the medium of appropriation Acts:

Act of April 6, 1914, c. 52, 38 Stat. 312, 335, Sec. 5 (U. S. C., Title 5, sec. 55) (Payment of accountants).

Act of May 10, 1916, c. 117, 39 Stat. 66, 120, as amended by Act of August 29, 1916, c. 417, 39 Stat. 556, 582 (U. S. C., Title 5, secs. 58, 59) (Prohibition of payment of double salaries).

Rev. Stat. Sec. 1761, as amended by Public Res. of June 7, 1924, c. 377, 43 Stat. 669 (U. S. C., Title 5, sec. 56) (Prohibition of payment of salary to unconfirmed officials appointed during session of Congress).

Act of Oct. 22, 1913, c. 32, 38 Stat. 208, 212 (U. S. C., Title 5, sec. 54) (Prohibition of employment of publicity experts).

Rev. Stat. Sec. 1766, as amended by Act of June 10, 1921, c. 18, 42 Stat. 20, 23 (U. S. C., Title 5, sec. 82) (Prohibition of salary payments to debtors of the United States).

Act of July 1, 1937, c. 423, 50 Stat. 442, 446; Act of June 11, 1938, c. 347, 52 Stat. 642, 646 (limiting employment of aliens in military activities).

Act of June 16, 1937, c. 359, 50 Stat. 261, 265, Act of April 27, 1938, c. 180, 52 Stat. 248, 251 (limiting employment of aliens in American missions abroad).

Act of April 27, 1938, c. 180, 52 Stat. 248, 289, Act of May 23, 1938, c. 259, 52 Stat. 410, 435, Act of June 25, 1938, c. 681, 52 Stat. 1114, 1162 (limiting compensation of certain alien officers and employees of the United States).

Act of June 29, 1937, c. 404, 50 Stat. 395, 396, Act of June 16, 1938, c. 464, 52 Stat. 710, 711–712 (prohibition of payment of salary to Department of Agriculture officials and employees predicting future prices of cotton).

Act of April 27, 1938, c. 180, 52 Stat. 248, 289, Act of March 28, 1938, c. 55, 52 Stat. 120, 148, and other acts (prohibition of salary payments to officials whose nomination the Senate has rejected).

Act of June 16, 1937, c. 359, 50 Stat. 261, 263, Act of April 27, 1938, c. 180, 52 Stat. 248, 250 (prohibition of salary payments to foreign service officials receiving another salary from the United States).

Act of April 27, 1937, c. 140, 50 Stat. 96, 101 (prohibition of payments to naval reservists drawing a pension from the United States).

Act of July 1, 1937, c. 423, 50 Stat. 442, 462, (prohibition of payments, etc., to National Guard officers or men drawing a United States pension).

Act of July 1, 1937, c. 423, 50 Stat. 442, 464 (prohibition of payments, etc., to members of the Organized Reserves drawing pensions).

Act of April 27, 1937, c. 140, 50 Stat. 96, 115, Act of July 1, 1937, c. 423, 50 Stat. 442, 467, and many other acts (prohibition of payments to officials using time measuring devices in employees' work, etc.).

Act of June 28, 1937, c. 396, 50 Stat. 329, 344 (Social Security Board experts or attorneys receiving more than $5,000 annual salary to be confirmed by Senate).

Act of April 27, 1938, c. 180, 52 Stat. 248, 269 (Department of Justice attorneys to be admitted to the bar).

Act of April 27, 1938, c. 180, 52 Stat. 248, 264 (prohibition of salary payments to probation officers whose work falls below standards set by the Attorney General, etc.).

Act of June 16, 1937, c. 359, 50 Stat. 261, 278 (conciliation commissioners to be paid only one fee per case, and only after final disposition of the case).

Act of June 16, 1937, c. 359, 50 Stat. 261, 300, Act of April 27, 1938, c. 180, 52 Stat. 248, 286–287 (Secretary of Labor to expend less than authorized by existing law for enforcement of contract laborers act).

Act of June 29, 1937, c. 403, 50 Stat. 359, 363 (District of Columbia to insert legal advertisements less extensively than required by existing law).

Act of April 27, 1937, c. 140, 50 Stat. 96, 107 (limiting the number of midshipmen at the Naval Academy to a number less than required by existing law).

Act of July 1, 1937, c. 423, 50 Stat. 442, 464 (limiting active duty of Army reserve officers).

Act of April 27, 1938, c. 180, 52 Stat. 248, 269 (limiting a payment of witness, juror, and bailiff fees).

Act of April 27, 1938, c. 180, 52 Stat. 248, 268 (only one witness fee to be paid).

Act of April 27, 1938, c. 180, 52 Stat. 248, 268 (bailiffs only to be paid for work performed when marshals unavailable).

Act of July 1, 1937, c. 423, 50 Stat. 442, 446, Act of June 11, 1938, c. 347, 52 Stat. 642, 646 (no payments to retired Army officers connected with the sale of supplies to Army).

Act of July 1, 1937, c. 423, 50 Stat. 442, 447, Act of June 11, 1938, c. 347, 52 Stat. 642, 646 (no payments to Army officers or men connected with military journals accepting paid advertising of firms dealing with War Department).

Act of July 3, 1930, c. 848, 46 Stat. 949, 966, Act of February 23, 1931, c. 282, 46 Stat. 1376, 1391–1392 (no payments to public school officials soliciting funds without authorization from pupils).

Act of May 23, 1938, c. 259, 52 Stat. 410, 427 (no payments to Tariff Commission members interested in proceedings in which they participate).

Act of June 14, 1935, c. 241, 49 Stat. 341, 356 (no payments to District of Columbia teachers teaching or advocating communism).

Act of June 29, 1937, c. 401, 50 Stat. 352, 355, Act of June 21, 1938, c. 554, 52 Stat. 809, 813, Sec. 14 (no payments to relief officials participating in state or local elections).

Act of April 4, 1938, c. 62, 52 Stat. 156, 166, 171 (no payments on District of Columbia contracts not awarded to the lowest bidder, etc.).

Act of May 25, 1939, c. 149, Public No. 90, 76th Cong., 1st Sess., p. 7 (limiting number of instructors in the Naval Academy).

Act of June 16, 1939, c. 208, Public No. 130, 76th Cong., 1st Sess., p. 11 (requiring members of the Capitol Police Force to meet prescribed standards).

Act of June 29, 1939, c. 248, Public No. 156, 76th Cong., 1st Sess., p. 20 (requiring probation officers to meet certain prescribed standards).

Act of July 15, 1939, c. 281, Public No. 176, 76th Cong., 1st Sess., p. 6 (limiting legal advertisements of the District of Columbia "notwithstanding the requirement that such advertising provided by existing law").

Revised Statutes, section 5266 (U. S. C., Title 47, sec. 3) (no payments to any telegraph company neglecting or refusing to accord preference to Government telegrams).

Act of February 24, 1899, c. 187, 30 Stat. 846, 864, see U. S. C., Title 5, sec. 27 (forbidding use of recording clocks for recording time of Government employees).

APPENDIX C

Certain of the statutes listed in Appendix B provide as follows:

Act of October 22, 1913, c. 32, 38 Stat. 208, 212. (U. S. C., Title 5, sec. 54):

> No money appropriated by this or any other Act shall be used for the compensation of any publicity expert unless specifically appropriated for that purpose.

Act of April 6, 1914, c. 52, 38 Stat. 312, 335 (U. S. C., Title 5, sec. 55):

> SEC. 5. That no part of any money appropriated in this or any other Act shall be used for compensation or payment of expenses of accountants or other experts in inaugurating new or changing old methods of transacting the business of the United States or the District of Columbia unless authority for employment of such services or payment of such expenses is stated in specific terms in the Act making provision therefor and the rate of compensation for such services or expenses is specifically fixed therein, or be used for compensation of or expenses for persons, aiding or assisting such accountants or other experts, unless the rate of compensation of or expenses for such assistants is fixed by officers or employees of the United States or District of Columbia having authority to do so, and such rates of compensation or expenses so fixed shall be paid only to the person so employed.

Act of June 29, 1937, c. 403, 50 Stat. 359, 363:

> For general advertising, authorized and required by law, and for tax and school notices and notices of changes in regulations, $7,000: *Provided*, That this appropriation shall not be available for the payment of advertising in newspapers published outside of the District of Columbia, notwithstanding the requirement for such advertising provided by existing law.
>
> For advertising notice of taxes in arrears July 1, 1937, as required to be given by the Act of February 28, 1898, as amended, to be reimbursed by a charge of 50 cents for each lot or piece of property advertised, $5,500: *Provided*, That this appropriation shall not be available for the payment of advertising the delinquent tax list for more than once a week for two weeks in the regular issue of one morning or one evening newspaper published in the District of Columbia, notwithstanding the provisions of existing law.

Act of June 14, 1935, c. 241, 49 Stat. 341, 356:

> * * * *Provided*, That hereafter no part of any appropriation for the public schools shall be available for the payment of the salary of any person teaching or advocating Communism.

Act of June 16, 1938, c. 464, 52 Stat. 710, 711:

> * * * *Provided further*, That no part of the funds appropriated by this Act shall be used for the payment of any officer or employee of the Department of Agriculture who, as such officer or employee, or on behalf of the Department or any division, commission, or bureau thereof, issues, or causes to be issued, any prediction, oral or written, or forecast with respect to future prices of cotton or the trend of same: * * *

Act of July 1, 1937, c. 423, 50 Stat. 442, 446:

> No payment shall be made from money appropriated in this Act to any officer on the retired list of the Army who, for himself or for others, is engaged in the selling of, contracting for the sale of, or negotiating for the sale of, to the Army or the War Department, any war materials or supplies.

Act of April 27, 1937, c. 140, 50 Stat. 96, 107:

> * * * *Provided further,* That no part of this appropriation shall be available for the pay of any midshipmen whose admission subsequent to January 30, 1937, would result in exceeding at any time an allowance of four midshipmen for each Senator, Representative, and Delegate in Congress; of one midshipman for Puerto Rico, a native of the island, appointed on nomination of the Governor, and of four midshipmen from Puerto Rico, appointed on nomination of the Resident Commissioner; and of four midshipmen from the District of Columbia; * * *

Act of May 23, 1938, c. 259, 52 Stat. 410, 427:

> * * * *Provided further,* That no part of this appropriation shall be used to pay the salary of any member of the Tariff Commission who shall hereafter participate in any proceedings under sections 336, 337, and 338 of the Tariff Act of 1930, wherein he or any member of his family has any special, direct, and pecuniary interest, or in which he has acted as attorney or special representative.

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